German American Bank, supra, and elsewhere as well, *Hardy* v. *Chesapeake Bank* (1879) 51 Md. 562, brought such a case under the rule that notice to an agent who is acting contrary to his principal's interests does not affect the principal and hence denied the depositor's liability. The contrary view, maintained in *Dana* v. *Bank; Bank* v. *Morgan,* and *Bank* v. *Allen, supra,* and reaffirmed in *Critten* v. *Chemical Nat. Bank* seems nevertheless the better supported by principle as well as authority. The doctrine of notice, so much insisted on in the learned dissenting opinion of VANN, J., in the last named case is really inapplicable. There is no question of imputing the clerk's knowledge to the depositor; for intention is not the determining factor in the case. The necessary inquiry is whether the depositor has performed a positive duty enjoined upon him, that of making a diligent examination; and though he may delegate its performance, he cannot lessen his responsibility thereby.

HIGHWAYS—INTEREST OF ABUTTING OWNER.—The interest of an abutting property owner in a street in a city, the fee of which is in the city, has given rise to much difference of opinion. The tendency is to confuse the interests of both the city and the abutting owner with the interests of those parties when the fee is in the abutting owner.

There are two theories which would seem to be at the foundation of the various decisions, but their application is much obscured by the inaccurate language of the courts. The natural and reasonable theory would be to consider the interest of the city as an ordinary fee simple subject to an easement which is appurtenant to the land of each abutting owner. The extent of this easement is defined by the decisions within narrow limits. All jurisdictions hold that it embraces the right of access and egress, *Doane* v. *Elev. R. R.* (1896) 165 Ill. 510; and some hold it also embraces the right to enjoy the light and air coming over the street, *Lahr* v. *Elev. R. R.* (1887) 104 N. Y. 268. The former view seems to be better, 2 COLUMBIA LAW REVIEW, 158. The result of this theory would be that the city could make any use of its land not inconsistent with the right of the abutting owner or of the right of the public in the street, *City of Des Moines* v. *Hall* (1868) 24 Iowa 234. What has probably confused the courts in the acceptance of this view is the fact that most of the statutes vesting the fee of the street in the city have been construed to vest a determinate fee, and to make the land revert to the original donor or the abutting owner, in case the street is abandoned, *Moses* v. *R. R.* (1859) 21 Ill. 515; *City of Des Moines* v. *Hall, supra.* The fact that such an estate is vested in the city would make no difference in the rights of the parties until the estate was determined, however, and is immaterial. An easement is property within the protection of the constitution, and such an easement could not be taken without just compensation, *Story* v. *Elev. R. R.* (1882) 90 N. Y. 122.

The other theory is that the city is invested with the fee in trust for the public and the abutting owner and has in itself no beneficial interest in the street, *Denver R. R.* v. *Nestor* (1887) 10 Colo. 403; *Crawford* v. *Village* (1857) 7 Ohio St. 459. These cases are followed and perhaps extended by the recent case of *Callen* v. *Columbus Edison Electric Light Co.* (Ohio, 1902) 64 N. E. 141. In that case the

court held that the plaintiff was deprived of property by having two poles with nine wires strung on them about fifty feet above the ground placed in the street alongside his lot, the fee of which street was in the city, and that the plaintiff was entitled to have the defendant perpetually enjoined and to a mandatory injunction for the removal of the poles and wires. This decision is a logical outcome of the theory that the city has no beneficial interest in the street of which it owns the fee and it follows that any additional burden, not intended by the original donor will be a deprivation of the abutting owner's beneficial interest.

It must have been the intention of the legislature in vesting the fee of the streets in the city, to give the city an opportunity to put the streets to new uses which it considered beneficial to the welfare of the city, without the opposition that had been experienced when the fee of the street was in the abutting owner, and the construction of the statute here given makes that action of the legislature useless. The abutting owner has as much ground to object to any additional burden as he had when he owned the fee. There was in the principal case no appreciable deprivation of the plaintiff's right of ingress and egress nor of his right to enjoy the light and air. It is no reason for the decision to say that if this act was allowed the wires and poles might be increased until the plaintiff was entirely deprived of light and air, because as soon as there was any appreciable deprivation the plaintiff would have his remedy, if it was held he had only an easement in the street.

The court at various places in the opinion refers to the interest of the city as a qualified fee and to the interest of the abutting owner as an incorporeal hereditament, and concludes it is idle to discuss at length the character of the right of the abutting owner, but a fair inference from what is said leads to the conclusion that the abutting owner is held to have all the beneficial interest in the street not held for street purposes proper for the public. The decision ignores the growing needs of a city and a city population which demand that the streets be put to new and unusual uses and goes beyond the decisions of the other States, *R. R. Co.* v. *Bingham* (1889), 87 Tenn. 522.

CONSTITUTIONAL LAW—DUE PROCESS OF LAW—POWER OF LEGISLATURE TO MAKE EVIDENCE CONCLUSIVE.—In *Missouri, K. & T. Ry. Co.* v. *Simonson* (1902), 68 Pac., 653, the Supreme Court of Kansas has held unconstitutional, as a violation of the clause insuring due process of law, a statute making the specification of weights in bills of lading issued by railroad companies conclusive evidence of the correctness of such weights. While the legislature has general power of control over the rules of judicial evidence its competence does not extend, it is said, to the absolute exclusion of that which proves a case or the compulsion to receive that which is false. As pointed out by the able dissenting opinion, however, the cases cited as authority are hardly relevant to the question at issue. The court relied largely on the rule that the legislature cannot make a tax deed conclusive evidence to bar the owner. *Corbin* v. *Hill* (1866), 21 Ia 70; Blackwell, Tax Titles, 97. In *Wantlan* v. *White* (1862), 19 Ind. 470, which was also cited, a statute making the age given by a minor en-